

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 5, 2001
10:00 A.M.

Reported by:
Valorie Phillips
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Michal Moore

Robert Pernell

STAFF PRESENT

Steve Larson

Bill Chamberlain

Jeff Ogata

Jon Leber

PUBLIC ADVISER

Priscilla Ross

ALSO PRESENT

Stephen K. Gardner, Attorney

Charles H. Pomeroy IV, Attorney (teleconference)

McKenna and Cuneo

representing City of Chula Vista

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1 P R O C E E D I N G S

2 10:00 a.m.

3 CHAIRMAN KEESE: I call this meeting of
4 the California Energy Commission to order.
5 Commissioner Pernell, would you lead us in the
6 Pledge, please.

7 (Whereupon, the Pledge of Allegiance was
8 recited in unison.)

9 CHAIRMAN KEESE: Thank you. We have a
10 short Commission meeting today. Commissioner
11 Rosenfeld and Commissioner Laurie are out on
12 business.

13 Item 1, West Group. Possible approval
14 of contract 140-01-002 for \$18,563 for a
15 continuing subscription to the Westlaw Legal
16 Research Service.

17 Do we have a motion?

18 COMMISSIONER MOORE: Mr. Chairman, I'm
19 prepared to move and get it on the floor, and then
20 I have a short question for Mr. Ogata.

21 COMMISSIONER PERNELL: Second.

22 CHAIRMAN KEESE: Okay. Motion,
23 Commissioner Moore; second, Commissioner Pernell.

24 COMMISSIONER MOORE: My question, Mr.
25 Ogata, is that this contract allows us to get this

1 electronically, as well, so it's the same as
2 having a Nexus/Lexis search engine? So we get
3 hard copy, as well as access electronically?

4 MR. OGATA: Well, Commissioner Moore,
5 this is computerized research, so we will be able
6 to download information that we get from
7 computerized research. I'm not sure what you mean
8 by hard copy. I mean we do have a library, so we
9 have books, but this is in addition to that.

10 COMMISSIONER MOORE: But I'm linking
11 this to the library, itself. In other words, when
12 they update the blue books that are on the shelf,
13 the West books, they have an addendum that
14 typically goes in a pocket in the back.

15 Does this literally update in parallel
16 with that, so that electronically when you did a
17 search you get the most current version that would
18 be in a hard copy, as well?

19 MR. OGATA: That's correct. Typically,
20 since this is computerized research this will be
21 even more up to date than the written stuff which
22 we receive, which tends to be a little bit behind.

23 COMMISSIONER MOORE: Good, thank you.

24 CHAIRMAN KEESE: Thank you. Any further
25 comments?

1 All in favor?

2 (Ayes.)

3 CHAIRMAN KEESE: Opposed? Adopted three
4 to nothing. Thank you.

5 Item 2, Sunrise Power Project, has been
6 moved to the agenda for the 12th.

7 Item 3, Residential Manual.
8 Consideration and possible approval of the
9 residential energy conservation manual for the
10 2001 building energy efficiency standards.

11 COMMISSIONER PERNELL: Mr. Chairman.

12 CHAIRMAN KEESE: Commissioner Pernell.

13 COMMISSIONER PERNELL: Just briefly,
14 this item was recommended to you today by the
15 Energy Efficiency Committee. We're bringing this
16 for your consideration for compliance with the '01
17 energy efficiency standards for residential
18 buildings.

19 As you know, this is required by the
20 Public Resources Code and it provides examples,
21 explanations and technical information to have
22 building communities comply with the '01 energy
23 efficiency standards.

24 And with that I'll turn it over to
25 Mr. -- I forget.

1 CHAIRMAN KEESE: Leber.

2 MR. LEBER: This is Jon Leber,
3 Commission Staff.

4 COMMISSIONER PERNELL: Mr. Leber.

5 MR. LEBER: This manual was sent out to
6 the active and interested participants, many of
7 whom who commented during the proceeding for
8 adopting the standards earlier in the year.

9 (Off-the-record discussion.)

10 MR. LEBER: We received a number of
11 comments from the participants. They were very
12 helpful in, you know, pointing out little pieces
13 and parts here that could be improved in the
14 manual. Sometimes improvement that we actually
15 went beyond what was in AB-970 sort of thing to
16 just make it more readable.

17 We certainly appreciate all the input
18 that we got in that people were donating their
19 labor, in a sense, to help us out. And certifying
20 this manual meets the requirements of section
21 25402.1(c) of the Public Resources Code. And
22 certainly we recommend that you approve it.

23 If you have any questions, be happy to
24 answer them.

25 COMMISSIONER PERNELL: Mr. Chairman, I

1 have no questions. I would be happy to move this
2 item.

3 CHAIRMAN KEESE: I reviewed. Good work.
4 All right, motion, Commissioner Pernell.

5 COMMISSIONER MOORE: Second.

6 CHAIRMAN KEESE: Second, Commissioner
7 Moore.

8 All in favor?

9 (Ayes.)

10 CHAIRMAN KEESE: Opposed? Adopted three
11 to nothing. Thank you, very good work, good
12 document.

13 Item 4, residential building energy
14 efficiency standards has been moved to the agenda
15 for the 19th of this month.

16 Item 5, this has been withdrawn from the
17 agenda. And we will have another date for a
18 meeting, but we're not setting it at this time.

19 Item 6, Chula Vista Peaker Project.
20 Consideration and possible issuance of an order
21 declaring the Chula Vista Generating Station
22 Peaker Project certification forfeited due to
23 noncompliance with the conditions of certification
24 requiring the project to be operational by
25 September 30, 2001. This item is based upon the

1 order to show cause issued to RAMCO, Inc., the
2 project developer, by the Energy Commission at the
3 August 22, 2001 business meeting.

4 Good morning. I will mention at this
5 moment that Mr. Charles Pomeroy is on the phone
6 and wishes to speak on this issue.

7 Mr. Ogata.

8 MR. OGATA: Thank you, Commissioner.
9 This is Jeff Ogata, Staff Counsel.

10 As you recall at the August 22nd
11 business meeting this Commission adopted an order
12 to show cause to RAMCO, asking them to provide a
13 statement to the Commission as to why they should
14 not forfeit the certification granted to the Chula
15 Vista Peaker Generating Station.

16 And this order to show cause was based
17 upon a complaint that was also issued by the
18 Commission on July 26th in response to a petition
19 from the City of Chula Vista.

20 And the order to show cause was also
21 based upon the final decision in this matter which
22 stated that if the Energy Commission finds that
23 the project owner failed to proceed with due
24 diligence to have the Chula Vista Peaker
25 Generating Station project in operation by

1 September 30, 2001, the applicant shall forfeit
2 its certification.

3 The City of Chula Vista also filed a
4 declaration from Mr. Bradford Remp, who is the
5 Chief Building Official for the City of Chula
6 Vista. And in that declaration Mr. Remp declared
7 that as of August 13th there was no construction
8 of the proposed project on the site. And based
9 upon his training, education and experience his
10 opinion was that the project would not be
11 operational on or before September 30, 2001.

12 We have not received any communication
13 from RAMCO regarding this. And so based upon
14 that, staff would recommend that the Commission
15 adopt the finding that RAMCO has not proceeded
16 with due diligence and order that certification
17 for the RAMCO Chula Vista Peaker Generating
18 Station is forfeited.

19 Mr. Stephen Gardner is here with the
20 lawfirm of McKenna and Cuneo, representing the
21 City of Chula Vista, and he has some additional
22 information for you.

23 CHAIRMAN KEESE: Mr. Gardner.

24 MR. GARDNER: Good morning, Mr.
25 Commissioners. I'm Stephen Gardner with McKenna

1 and Cuneo, and I represent the City of Chula
2 Vista.

3 Mr. Ogata suggested that I update one
4 piece of information for the Commission's
5 consideration. The City of Chula Vista filed with
6 the Commission on August 31st a supplemental
7 declaration of Bradford Remp. Apparently that may
8 not have worked its way through the docket office.

9 And so I just wanted to mention for the
10 record that Mr. Remp supplemented his declaration
11 by visiting the site, the RAMCO Chula Vista
12 Peaking site on August 31st, observed that there
13 is no construction activity whatsoever taking
14 place on the site.

15 And then reiterated his earlier expert
16 opinion that within a 30-day period of
17 construction that you could not reasonably
18 construct a peaking unit by September 30th.

19 So that supplemental declaration has
20 been filed with the Commission, but I wanted to
21 place that on the record.

22 I also wanted to add on behalf of the
23 City of Chula Vista, the City very much
24 appreciates the Commission's consideration of this
25 matter, and commends the Commission for its hard

1 work and diligence in response to the California
2 energy crisis.

3 Thank you.

4 CHAIRMAN KEESE: Thank you. Mr.
5 Pomeroy, are you on the phone?

6 MR. POMEROY: My only comment -- I am
7 also with McKenna and Cuneo, representing the City
8 of Chula Vista. I was attending this meeting in
9 the event that there were certain questions raised
10 by the Commission. But I endorse the
11 recommendation by staff.

12 CHAIRMAN KEESE: Thank you. Why don't
13 you hold on for a second.

14 Do we have a motion?

15 COMMISSIONER MOORE: Mr. Chamberlain has
16 a point I think he'd like to make, Mr. Chairman.

17 CHAIRMAN KEESE: Mr. Chamberlain.

18 MR. CHAMBERLAIN: Yes, Mr. Chairman. It
19 might be appropriate, given that the City of Chula
20 Vista has filed a petition with the Court of
21 Appeal, seeking judicial review of the
22 Commission's decision.

23 I think it would be appropriate to ask
24 if the Commission does issue this decision as we
25 anticipate, withdrawing the certification, if the

1 City will also withdraw that petition.

2 CHAIRMAN KEESE: I think that's a
3 beautiful question, I'm glad I thought of it.

4 (Laughter.)

5 MR. GARDNER: The City has already
6 notified the Court of Appeal of the procedure in
7 this case, and asked the Court of Appeal not to
8 make any rulings pending the Commission's
9 decision.

10 It would also be our intent to withdraw
11 the petition as soon as the Commission hopefully
12 issues its order, which the City does endorse.

13 Thank you.

14 CHAIRMAN KEESE: Thank you. Thank you,
15 Mr. Chamberlain.

16 COMMISSIONER MOORE: Mr. Chairman, I'm
17 prepared to move the Commission order reference to
18 docket 01-EP-03, and indicate that we find that
19 RAMCO has not proceeded with due diligence and
20 order that the certification for the RAMCO Chula
21 Vista Peaker Generating Station is forfeit.

22 CHAIRMAN KEESE: Motion by Commissioner
23 Moore.

24 COMMISSIONER PERNELL: Second.

25 CHAIRMAN KEESE: Second by Commissioner

1 Pernell. Any further comment?

2 All in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Adopted three
5 to nothing. Thank you.

6 COMMISSIONER MOORE: Mr. Chairman, I
7 have a question for Mr. Ogata, following that; and
8 perhaps Mr. Chamberlain, as well.

9 It seems to me that it is an extremely
10 odd situation where we don't even have counsel
11 responding on behalf of something that arguably
12 would cost hundreds of thousands, if not millions
13 of dollars. There is a tremendous amount of
14 investment, at least indicated by the procedure to
15 go through and file for one of these.

16 Does it strike you that we have a very
17 odd incident here? And I wonder if that portends
18 anything about the quality or the qualifications
19 of the people that make some of these
20 applications. And is there a need to be more
21 diligent about finding out who some of these
22 companies are?

23 MR. CHAMBERLAIN: Well, I think this
24 obviously was a situation that was born out of the
25 very unusual circumstances of the crisis that we

1 found ourselves in earlier this year.

2 And the Governor's executive order
3 obviously put a premium on moving quickly. This
4 particular project, I think, found itself caught.
5 It was anticipating getting a contract with the
6 Department of Water Resources that would provide
7 for the economic viability of the project. And
8 apparently whatever contract it was anticipating
9 was not forthcoming.

10 It came to a point where the Department
11 was starting to pull back and realizing that it
12 had enough power, and didn't need to take on more
13 liabilities. And so this project found itself
14 without the contractual support that it had
15 anticipated. And I think just made the decision
16 to pull the plug on the whole thing.

17 COMMISSIONER MOORE: Well, then the
18 first part of my question is still on the table.
19 And that is, isn't it a bit odd that we would have
20 Mr. Ogata trying to get in contact with what I
21 presume is legal counsel for this firm, and
22 getting no response? Doesn't that seem odd?

23 MR. OGATA: Well, Commissioner Moore, we
24 didn't try to make contact with legal counsel. We
25 did attempt to make contact with the company,

1 itself, the president of the company.

2 I didn't personally do that. Another
3 member of staff attempted that. Made, from what I
4 understand, two phone calls; did not receive any
5 calls back. The mail that we sent has not been
6 returned. We sent it to the last known address of
7 this company, and it has not been returned. So we
8 have to assume that the mail is getting through.

9 So, I agree with you, it does seem a bit
10 odd that we haven't been able to make any contact
11 to ascertain, you know, any information from
12 RAMCO.

13 COMMISSIONER MOORE: Mr. Chairman, if
14 you will, I have a question that is brought on by
15 that that I'd like to direct to Mr. Chamberlain,
16 if I may.

17 And that is concerning the comment that
18 you just made on the Governor's executive order.
19 It seems to me that in the case of any executive
20 order, or any emergency order, is the possibility
21 in law or in statute or regulation that the
22 emergency will be officially passed at some point.

23 And I'd like to know how the regulations
24 that we're, or the state, is bound under deal with
25 an emergency that is perhaps not an emergency any

1 more, and what the length of time, the lifespan of
2 an executive order, based on an emergency, really
3 is.

4 MR. CHAMBERLAIN: Commissioner Moore,
5 I'm going to have to apologize. You warned me
6 yesterday that you'd be asking this question, and
7 I --

8 COMMISSIONER MOORE: This is my slow
9 pitch softball, and I'm --

10 (Laughter.)

11 MR. CHAMBERLAIN: I come here
12 unprepared, I'm sorry. I did not have time
13 yesterday. I had nonstop meetings. Could I bring
14 you an answer to that next week?

15 COMMISSIONER MOORE: I would appreciate
16 it. I'd like to understand what the limits are.
17 Certainly I made some comments about this last
18 week when we were going through the second of the
19 cases where -- that concerned it.

20 And it seems to me we ought to have a
21 good understanding of what the legal bounds are on
22 this, if not the ethical bounds. Those are a
23 different issue, but we ought to have a handle on
24 what the law proscribes and what limits there are
25 inherent in it.

1 So, if you wouldn't mind coming back to
2 us at the next meeting. We're four at the next
3 meeting.

4 MR. CHAMBERLAIN: That's one week from
5 now, yes.

6 COMMISSIONER MOORE: The 12th, that may
7 not be the meeting you come back with it on.
8 Well, perhaps a memo.

9 COMMISSIONER PERNELL: Perhaps a memo,
10 we could --

11 CHAIRMAN KEESE: Let's get a memo as
12 soon as possible.

13 MR. CHAMBERLAIN: Okay.

14 COMMISSIONER PERNELL: -- would work.

15 CHAIRMAN KEESE: Not a rush, but --

16 COMMISSIONER PERNELL: I would be
17 interested in that, as well.

18 CHAIRMAN KEESE: Thank you.

19 Committee Oversight? We do not have a
20 legislative report. Any other committees?

21 Chief Counsel, anything else?

22 MR. CHAMBERLAIN: Yes, Mr. Chairman. As
23 the Commission may recall, during the late 1980s
24 and early 1990s, the Commission licensed a number
25 of solar facilities known as the Luz Facilities.

1 And because of the disruption of a lot
2 of habitat land, part of the conditions of
3 certification of that were that approximately 3000
4 to 4000 acres of land be -- of desert tortoise
5 habitat land be dedicated.

6 The actual transfer of the land to the
7 Department of Fish and Game was about 98 percent
8 complete when the Luz Development Company went
9 bankrupt.

10 And for the last 12 years or so that
11 proceeding has been inching along. And I'm very
12 pleased to tell you today that last week that
13 proceeding was completed and the State of
14 California did receive the land from the
15 bankruptcy estate. And so that matter has been
16 settled.

17 CHAIRMAN KEESE: Thank you. I suppose
18 the byline on this story in the press could be it
19 moved at the pace of a desert tortoise.

20 (Laughter.)

21 CHAIRMAN KEESE: Mr. Larson.

22 MR. LARSON: No reports today.

23 CHAIRMAN KEESE: Public Adviser's
24 report.

25 MS. ROSS: No report, sir, thank you.

1 CHAIRMAN KEESE: We have no report. Any
2 public comment?

3 Seeing none, this meeting is adjourned.
4 Thank you, everybody.

5 (Whereupon, at 10:25 a.m., the business
6 meeting was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of September, 2001.

VALORIE PHILLIPS

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